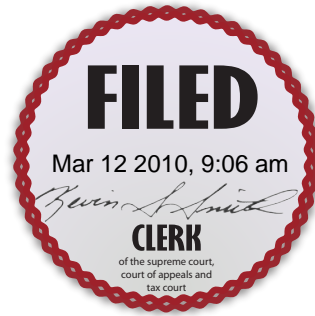


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JASON REEVES,)

Appellant-Defendant,)

vs.)

No. 71A03-0909-CR-441

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D01-0807-FA-32

March 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Jason Reeves (“Reeves”) appeals his conviction and sentence for Murder, a felony.¹

We affirm.

Issues

Reeves presents two issues for review:

- I. Whether he was entitled to a mistrial when a witness referenced Reeves’ arrest for murder in an unrelated death; and
- II. Whether his sixty-five year sentence is inappropriate.

Facts and Procedural History

During April of 2006, a man invaded the home of Kay DeBerry, Reeve’s mother, and shot her several times. DeBerry survived and identified Devon Groves (“Groves”) as the person who shot her. Reeves expressed his belief that there was a plot against him and his family, including his minor child, who had been present during DeBerry’s shooting. Reeves assembled a group that included his brothers Terry Waddell (“Waddell”) and Jermaine Reeves (“Jermaine”), and a family friend, Larry Mitchell (“Mitchell”). Reeves drove to South Bend in a rented vehicle, looking for Groves.

Reeves drove around for about two hours, trying to locate Groves, who was not at home. Eventually, Reeves stopped his vehicle outside an apartment rented by one of Grove’s cousins. He remained in the vehicle but allowed Mitchell to take his gun. Waddell, Jermaine, and Mitchell went to look through the apartment window. After some discussion

¹ Ind. Code § 35-42-1-1.

among the group about seeing a person believed to be Groves moving around inside the apartment, Mitchell fired three shots through the window. Tragically, sixteen-year-old Ja-Vonda Tharbs was struck and killed. Groves was not inside the apartment.

On July 29, 2008, Reeves was charged with conspiracy to commit murder; the information was later amended to include a charge of murder. On June 1, 2009, Reeves was brought to trial. At trial, Mitchell and Reeves' former roommate testified against Reeves. He was convicted as charged. The trial court entered a judgment of conviction upon the murder conviction and sentenced Reeves to sixty-five years imprisonment. He now appeals.

Discussion and Decision

I. Mistrial

During his direct examination, Mitchell described his contact with Reeves after the shooting. When the prosecutor inquired "what would he talk to you about," Mitchell volunteered, "He was basically just trying to give me tips or whatever, because he was already locked up for a murder before." (Tr. 505.) Reeves moved for a mistrial. The trial court denied the motion, but admonished the jury to disregard Mitchell's response, and informed them that Reeves had not, in fact, ever been charged with murder before. Reeves claims this was inadequate to cure error, because the jury was permitted to infer that Reeves knew "how to get away with murder." Appellant's Brief at 6.

Whether to grant a mistrial lies in the discretion of the trial court. Hollingsworth v. State, 907 N.E.2d 1026, 1031 (Ind. Ct. App. 2009). We will find an abuse of discretion only if Reeves can "show that he was placed in a position of grave peril to which he should not

have been subjected.” Francis v. State, 758 N.E.2d 528, 532 (Ind. 2001). Generally, “[a] timely and accurate admonition is presumed to cure any error in the admission of evidence.” Banks v. State, 761 N.E.2d 403, 405 (Ind. 2002).

Mitchell’s unresponsive comment at first blush appeared to be an improper revelation that Reeves had previously been arrested on a criminal charge, in violation of a motion in limine. However, a search of relevant records during a jury recess disclosed that Reeves had been involved in a prior killing, but the State had declined to prosecute him for murder in light of facts and circumstances pointing to self-defense. The trial court specifically informed the jury that Reeves had never been charged with murder before, directed them to disregard Mitchell’s inaccurate statement, and obtained their assurances that they could comply with the admonition. As such, we conclude that Reeves was not placed in grave peril by the stricken testimony and that the admonition was sufficient to cure any error.

II. Sentence

Reeves contends that his sentence is inappropriate pursuant to Indiana Appellate Rule 7(B). In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The burden is on the defendant to persuade us that his sentence is inappropriate.

876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

More recently, the Court reiterated that “sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to “leaven the outliers.” Id. at 1225. “[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” Id. at 1224.

A person who commits murder has a sentencing range of between forty-five years and sixty-five years, with the advisory sentence being fifty-five years. Ind. Code § 35-50-2-3. As such, Reeves received the maximum sentence.

The nature of the offense is that Reeves instigated a plot with his brothers and family friend to exact revenge for the shooting of Reeves’ mother. He provided the vehicle and the murder weapon. Undeterred by his failure to locate Groves immediately, Reeves continued his pursuit of his intended target and drove to the home of Groves’ relatives. Consistent with Reeves’ willingness to endanger innocent bystanders, sixteen-year-old Tharbs was ambushed and fatally shot inside her sister’s apartment.

The character of the offender is such that he had a significant criminal history. In 1995, he was convicted of carrying a handgun without a license. In 1997, he was convicted of resisting law enforcement. The following year, he was convicted of possession of

marijuana and possession of cocaine. In 1999, he was convicted of resisting law enforcement and again convicted of carrying a handgun without a license. In 2001, he was convicted of resisting law enforcement and twice convicted of possession of cocaine. In 2003, he was convicted of carrying a handgun without a license. In total, Reeves had four prior felony convictions and seven misdemeanor convictions. He was on probation at the time he committed the instant offense.

We do not find that the nature of the offense or the character of the offender render the maximum sentence inappropriate in this case.

Affirmed.

BAKER, C.J., and ROBB, J., concur.